

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN K. MCCARTNEY,

Plaintiff-Appellant,

v

LAKESIDE COMMUNITY BANK,

Defendant-Appellee,

and

WILLIAM T. SUMNER,

Defendant.

UNPUBLISHED

March 27, 2007

No. 272131

Wayne Circuit Court

LC No. 04-404040-CH

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition and denying her motion for leave to amend. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff obtained a short-term construction loan from defendant Lakeside Community Bank, secured by a future advance mortgage. Plaintiff later filed this action, asserting that defendant breached the loan agreement by failing to make advances as required. Defendant moved for judgment and presented evidence that plaintiff had defaulted on the loan and a default excused further performance. In response, plaintiff sought leave to amend her complaint to allege different theories of liability. The trial court tacitly denied the motion and granted defendant's motion.

The trial court's ruling on a motion to amend pleadings is reviewed for an abuse of discretion. *Doyle v Hutzl Hosp*, 241 Mich App 206, 211-212; 615 NW2d 759 (2000). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

If a dispositive motion is brought under MCR 2.116(C)(8) or (C)(10), "the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the

evidence before the court shows that the amendment would not be justified.” MCR 2.116(I)(5). After the time for amendment as of right has expired, a party may amend a pleading only by leave of the court or upon consent of the adverse party. The court shall freely grant leave when justice so requires. MCR 2.118(A)(2). “Leave to amend may be denied for particularized reasons, such as undue delay, bad faith, or dilatory motive on the movant’s part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of the amendment.” *Amburgey v Sauder*, 238 Mich App 228, 247; 605 NW2d 84 (1999).

Although the trial court never stated its reasons for denying plaintiff’s request for leave to amend, we conclude that plaintiff’s proposed amendment would be futile and thus affirm the trial court’s ruling. *Noyd v Claxton, Morgan, Flockhart & VanLiere*, 186 Mich App 333, 340; 463 NW2d 268 (1990).

Plaintiff’s proposed amendment included a claim for breach of contract. She claimed that as part of the original loan transaction defendant promised that when the construction loan came due, it would allow her to refinance with a 30-year end mortgage and that defendant failed to honor that agreement. However, the construction loan agreement expressly states, “At maturity, I may have to repay the entire outstanding Loan Account Balance in a single payment. At that time, you¹ may, but are not obligated to, refinance this Line of Credit.” The agreement also contains an integration clause specifying that it “is the complete and final expression of the agreement.” Because the alleged agreement regarding the end mortgage would expressly contradict the provision in the agreement that defendant was not obligated to refinance the loan, extrinsic evidence regarding the alleged end mortgage would not be admissible and this is so even though plaintiff claims she was induced to accept the loan agreement by the promise of the end mortgage. See *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 502; 579 NW2d 411 (1998); *Ditzik v Schaffer Lumber Co*, 139 Mich App 81, 87-88; 360 NW2d 876 (1984).

Plaintiff also sought to allege a claim for promissory estoppel, again based on defendant’s failure to refinance the construction loan with a 30-year end mortgage. However, “[p]romissory estoppel is not a doctrine designed to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract.” *Gen Aviation, Inc v Cessna Aircraft Co*, 915 F2d 1038, 1042 (CA 6, 1990) (internal quotation marks and citation omitted). Thus, if the performance which satisfies the detrimental reliance requirement of the promissory estoppel theory is the same performance which represents consideration for the written contract, the doctrine of promissory estoppel does not apply. *Id.* Because a written contract underlies this case and plaintiff’s performance in reliance on the alleged promise is the same performance required under the loan agreement, plaintiff’s promissory estoppel theory is inapplicable. An amendment is futile if it is legally insufficient on its face. *PT Today, Inc v Comm’r of the Office of Financial & Ins Services*, 270 Mich App 110, 143; 715 NW2d 398 (2006).

¹ “You” is defined in Section 1(A) as the Lender (defendant Bank).

Finally, plaintiff alleged that defendant engaged in “predatory loan practices” by entering into the loan transaction, which was “commercially unreasonable” because she had no hope of paying the loan when due. However, defendant presented evidence in connection with its own motion that it had “followed all standard banking practices and procedures in this matter” and plaintiff did not identify any particular law or regulation that was violated. The court cannot relieve a party from the consequences of her contract simply because the agreement was ill-advised. *Isbell v Anderson Carriage Co*, 170 Mich 304, 312; 136 NW 457 (1912).

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens